Trial of President Andrew Johnson for High Crimes and Misdemeanors.

TESTIMONY FOR THE DEFENCE.

Many Objections of Manager Butler Overruled by the Senate.

MR. STANBERY STILL ABSENT.

SPECIAL TELEGRAM TO THE HERALD.

WASHINGTON, April 16, 1868. Nothing particularly striking marked the impeachment proceedings of to-day. There was some documentary evidence offered, and several witnesses were called to testify as to the expressed intentions of the President relative to the removal of Secretary Stanton. The lawyers, Messrs. Cox and Merrick were allowed, by various rulings of the Senate, to give their evidence in full; but E. O. Perrin, who held a conversation with the Executive on the 21st of Pebruary last, was debarred from delivering him-

self of the dialogue which took place on that occasion. Mr. Butler made a very violent harangue at the close of the evidence for the defence, contending that the counsel for the President were consuming the public time by useless argumentation and irrelevant testimony. Mr. Evarts responded very sharply that the nan might easily discover, in looking over the report of the trial, that in the various debates on interlocutory points where the counsel for the President occupied but a paragraph the Managers indulged themselves to the extent of a column.

There is already on record a pyramid of evidence going to show the absence of all criminal intent on the part of the Executive.

Joseph H. Bradley, attorney, of this city, and Edgar Welles, the son of Secretary Welles, were this morning summoned as witnesses for the President.

PROCEEDINGS OF THE COURT.

Sixteenth Day.

United States Senate Chamber, Washington, April 16, 1868. The court opened in due form. All the Manager were present. Mr. Stanbery was again absent. On motion the reading of the nanutes was dis-

Senator SUMNER rose and said-Mr. Chief Justice, I send to the Chair a declaration of opinion to be adopted by the Senate as an answer to the constantly recurring questions on the admissibility of

pensed with.

The paper was read by the Clerk, expressing the opinton that, considering the character of this proceding, being a trial of impeachment before the Senate of the United States, and not a proceeding by dictment in an inferior court, Senators are Judges of law as well as of fact, from whose decision there is no appeal; that, therefore, the ordinary reasons for the exclusion of testimony do not exist therefore, it is deemed advisable that all evidence not trivial or obviously irrelevant shall be admitted, ing understood that in order to decide its value it shall be carefully considered on its final judgment. Senator Conness moved to lay the paper on the

, which was agreed to by the following vote:-YEAS—Jennors Buckalew, Cameron, Cattell, Chaudler, Cole, Conking, Conness, Corbett, Cracin, Davis, Dixon, Doollitte, Drake, Edmunds, Ferry, Fessenden, Freilinghuysen, Harlan, Howard, Howe, Johnson, Morgan, Morrill of Me., Morrill of Vi., Patterson of N. H., Pomeroy, Ramsey, Satisbury, Stewart, Thayer, Tipton, Williams and Yates—25.

NAYS—Senators Anthony, Fowler, Grinnes, Morton, Patterson of Tenn, Sherman, Sumner, Van Winkle, Vickers, Willey and Wilson—11.

The CHIEF JUSTICE directed the court to proceed. Mr. EVARTS-Mr. Chief Justice and Senators, I am ot able to announce the recovery of Mr. Stanbery, but I think, had not the weather been so entirely unworable, he would have been able to be present perhaps to-day. He is, however, convalescent. But nevertheless the situation of his health and proper care for its restoration prevent us from having much opportunity for consultations during this ession of the court. We shall desire to proceed today with such evidence as may be properly produced in his absence, and may occupy the session of the court with that evidence. We shall not desire to protract the examination with any such object or view, and if before the close of the ordinary period of the session we shall come to the end of that testimony we shall ask for an adjournment.

Mr. Curtis-Mr. Chief Justice, I offer two docupartment of State, in character precisely similar to some of those received yesterday. They are con-

some of those received yesterday. They are continuations of what was put in yesterday, so as to bring the evidence of the practice of the government down to a more recent period.

They were considered read.

Mr. URITIS—I will now put in evidence, so that they will be printed with this documentary evidence, two statements, furnished by the Secretary of the Senate, under the order of the Senate, one showing the beginning and ending of each legislative session of Congress from 1789 to 1868; the other being the beginning and ending of each special session of the Senate from 1789 to 1868.

They were considered read.

TESTIMONY OF WALTER S. COX.

They were considered read.

TESTIMONY OF WALTER S. COX.

Mr. Walter S. COX was sworn in behalf of the respondent, and examined by Mr. Curtis.

Q. Mr. Cox, will you please to state what is your residence and profession? A. I reside in Georgetown; I am a lawyer by profession.

Q. How long have you been engaged in the practice of law? A. Ten years.

Q. In this city? A. Yes, sir.

Q. In what courts? A. In the courts of the District.

Q. Were you connected profession.

Q. In this city? A. Yes, sir.
Q. Were you connected professionally with the matter of General Thomas before the Criminal Court of this District? A. I was.
Q. When and under what circumstances did your connection with that matter begin? A. On Saturday, the 22d of February.
Mr. BUTLER—II I have heard the question correctly, the question was, "When and under what circumstances did your connection with the case of General Thomas before the Supreme Court of this District commence?" To that we object. It is impossible to see how the employment of Mr. Cox to defend General Thomas could have anything to do with this case. We put in that Mr. Thomas said that if it had not been for the arrest he should have taken possession by force of the War Office. They then produced the record and the affidavit. Now I do not propose to argue, but I sak the attention of the Senate to the question whether the employment of Mr. Cox by Mr. Thomas as counsel, the circumstances under which he was employed and the declaration of Mr. Thomas to his counsel can be put in evidence under any rule. The circumstances are too trivial, if it was legally competent.

Mr. Curtis—I understand the question to be that we cannot show that General Thomas employed Mr. Cox as his counsel, and that we cannot show that General Thomas employed Mr. Cox as his counsel. We do not propose to prove either of these facts. If the gentleman will wait long enough to see what we do propose he will see that this objection is not relevant. (To the witness.) Now state when and by whom and under what circumstances you were employed in this matter.

Mr. BUTLER—Stop a moment. I object to the why and the by whom and under what circumstances this gentleman was employed by the President, that is worse, in my judgment, than if he was employed by the other. I desire the question to be put in writing.

The Chief Justice—The Chief Justice sees no objection to the question as an introductory question, but he will put it to the Senate if any Senators desire it.

No vote being called for the Chief Justice directed

No vote being called for the the witness to answer the question.

Witness—On Saturday, February 22, a messenger called at my house and stated to me that Mr. Seward desired to see me immediately,

Mr. BUTLER—I object to the declaration of any-

called at my house modelately.

Mr. Butler—I object to the declaration of anybodé.

The Chief Justice intimated to the witness that
be need not state what Mr. Seward said.

Witness—The messenger stated further that he
was to take me immediately to the President's
house. I accompanied him to the President's house
and found the President and General Thomas alone
there.

there.
Q. About what hour was this? A. About five clock in the afternoon. After I was seated the

e'clock in the afternoon. After I was seated the President stated—
Mr. Butlere—Stop a moment. I object to statements of the President at five o'clock P. M. (A titter in court, some Senators laughing outright.)
Senator Edmunds asked that the offer of evidence may be put in writing, so that Senators might understand it precisely.
The proposition was reduced to writing, as follows:—'We offer to prove that Mr. Cox was employed professionally by the President, in the presence of General Thomas, to take such legal proceedings in the case that had been commenced against General Thomas as would be effectual to raise judicially the

question of Mr. Stanton's legal right to have and to hold the office of Secretary for the Department of War against the authority of the President, and also an order to obtain a writ of que varranto for the same purpose; and we shall expect to follow up this proof by evidence of what was done by the witness in pursuance of the above employment."

Senator EDMUNDS asked what was the date of this interview.

Interview?

Mr. Custris replied that it was the 22d of February,
Mr. Burniss—This lestimony has two objections,
Mr. Pursiss—And Selstoney has two objections,
Mr. Pursiss—And Selstoney has two objections,
Mr. Pursiss—And Selstoney has the protect himself from
being turned out of office by force, the President
then sends, as it is proposed to prove, for Mr. Cox,
and first Mr. Santon had sought to protect himself from
being turned out of office by force, the President
then sends, as it is proposed to prove, for Mr. Cox,
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state of the record between the United States and General Thomas is not in that criminal complaint, but in the state of facts as regards the action and purpose of the President of the United States in attempting to produce before the United States in attempting to produce before the United States in attempting to produce before the United States in country for solenni Judicial determination he matter in controversy; that because the record of criminal charge against General Thomas does not contain the name or action of the President of the United States or States of the President could be used to the Contain the name or action of the President of the United States and the President could appear on the record of a prosecution sgainst General Thomas. But this is wholly saide from the point of inquiry here. Now, Mr. Chief Justice and Senators, we are not to be judged by the measure of proof we are able to order through this witness as regards the effect and value of the entire evidence bearing on this point, as it shall be drawn from this witness and from other witnesses, and from other forms of testimony. We state here distinctly, so as not to be misunderstood, that by this unexpected resistance of Mr. Stanton to this form of removal the President was obliged to find resource in the law, which a had ontemplated as a thing limpostible without antecedent proceedings, on which a proper footing could be had in court, and that then he did, with such promptiess, and such decasion, and such ciear and unequivocal purpose, as will be indicated in the evidence, assume immediately that duly. It will appear that a method thus presented to him for a more speedy determination of the mature of a quo nearronto. What has the provided by the automate of the case out of court as frivious and uscending the object of the case out of court as frivious and uscending the object of the United States. We then propose to show that this opportunity being thus evaded, the President proceeding to an instant decision in the nature of a quo nea

for that counsel do not expect or desired evidence. The evidence which we offer of the employment of this professional gentleman for the purpose indicated is entirely consistent with everything which appears on the docket. It is evidence not of declarations, as the Senator may perceive, but of acts, because it is well settled, as all has other acts, and that the verbal act is as much expande of proof as a physical act is. Now the employment for a particular purpose of an agent, whether professional or otherwise, is an act, and it may be always proved by the necessary evidence of which it is succeptively an act of the proof of the proo

of the government.

Mr. CURTIS admitted that that was undoubtedly the law in reference to que varranto in all the States with whose faws he was acquainted. He admitted that there could be no writ of que varranto, or information in the nature of the writ, axeent in behalf the public, but the question

what officer was to represent the public and in what name the information was to be tried depended upon particular statutes applicable to the case. These statutes differ in the different States under the laws of the United States. All proceedings in behalf of the United States in the Circuit and District Courts were taken by district attorneys in their own names, and all proceedings in behalf of the United States in the Supreme Court were taken by the Attorney General in his name. In reference to Mr. Cox, he expected to show an application by Mr. Cox to the Attorney General to obtain his signature to the proper information and the obtaining of that signature.

The CHIEF JUSTICE—Senators, the counsel for the President offer the proof that the witness, Mr. Cox, was employed professionally by the President, in the presence of General Thomas, to take such legal proceedings in the case which had been commenced against General Thomas, would be effectual to raise judicially the question of Mr. Stanton's legal right to continue to hold the office of Secretary for the Department of War against the authority of the President, and also in reference to obtaining a writ of quo warranto for the same purpose; and they state that they expect to follow up this proof by evidence as to what was done by the witness in pursuance of that employment. The first article of impendment after charging that Andrew Johnson, President of the United States, in violation of the constitution, &c., issued orders, which have been so frequently read, for the removal of Mr. Stanton, proceeds to say such orders were unlawfully issued with intent then and there to violate the act entitled "An Act Regulating the Tenure of Office," &c. The article charges, first, that the act done was done unlawfully, and then it charges that the act was done with intent to accomplish a certain result. That intent the President and General Thomas, and it is evidence of the President and General Thomas, and it is evidence so far of the fact. It may be evidence, also, of

tion of the doctrine of estopped which I want carried out throughout was estopped by his doctare the President was estopped by his doctare the President was estopped by his doctare the Doctrine of the President was estopped by his doctare the Doctrine of the President of the man forward as his counsel, thave only said that the fact that he spoke to General Sherman, and said to him that it was impossible to make up a case, shows that he shall not be allowed after the fact to attempt to get up a defence for himself by calling in this counsel. Now it is said what lawyer would suppose that it would appear upon the record in the case galants General Thomas that the President of the Carlot of the President of the United States, if he had employed counsel for General Thomas in the case, should have stated:—"Mr. Chief Justice, we are here appearing at the Instance of the President of the Justice of the United States; if he had employed counsel for General Thomas in the case, should have stated:—"Mr. Chief Justice, we are here appearing at the Instance of the President of the Justice of the United States;" and then if the Chief Justice of the United States;" and then if the Chief Justice of the United States; and then if the Chief Justice of the United States; and then if the Chief Justice of the United States; and then if the Chief Justice of the United States; and then if the Chief Justice of the United States; and then if the Chief Justice of the United States; and then if the Chief Justice of the United States; and then if the Chief Justice of the District, for he alone made the decision. He seed on the world have been discharged. Certainly there is no evidence of the Court shows that this man Thomas was discharged to say the theory of the American States of the Chief Justice of the United States; and the Chief Justice vaded the point; If you allow Mr. Cox to come in here and put in deciarations made to him by the President hirtings about his world and the promoter of the Chief Justice vaded the point; If you allow

YEAU-Senators Anthony, Bayard, Buckalew, Corbett, Davis, Dixon, Doolittle, Fossenden, Fowler, Freiinghuysen, Grimes, Hendricks, Howe, Johnson, McCreery, Morrill of Me., Morton, Norton, Patterson of N. H., Patterson of Tenn., Ross, Sausbury, Sherman, Sprague, Sumner, Trumbull, Van Winkle, Vickers and Wiley-Su, Nayu-Schatzer, Cameron, Cattell, Chandler, Conking, Nayu-Schatzer, Cameron, Cattell, Chandler, Conking, ikle, Vickers and Wiley—22.
AYS—Senators Cameron, Cattell, Chandler, Conkling, gin, Drake, Edminds, Ferry, Harlan, Howard, Mörgan, rill of Vt., Nye, Pomeroy, Ramsey, Stewart, Thayer, on, Williams, Wilson and Yates—41.

Gragin, brake, Schminds, Ferry, Harlan, Howard, Mergain, Morrill of M., Noc. Fomeroy, Ramsey, Stewart, Thayer, Tipton, Williams, Wison and Yates—11.

Mr. Cultris then resumed the examination of the witness as follows:—

Q. Now state what occurred between General Thomas and the President and yourself on that occasion? A. After referring to the appointment of General Thomas as Secretary of War ad interfin, the President stated that Mr. Stanton had refused to surrender possession of the department to General Thomas, and that he desired the necessary legal proceedings to be instituted without delay to test General Thomas, right to the office and to put him in possession. I inquired if the Attorney General was to act in the matter, whether I could consuit with him. The President stated that the Attorney General was to act in the matter, whether I could consuit with him. The President stated that the Attorney General was to act in the matter, whether I could consuit with him. The president stated that I would examine the subject immediately, and soon after I took my leave.

Q. When you left did you leave General Thomas and the President there? A. I did.

Q. About what time did you leave? A. I do not suppose I was there more than twenty minutes; Heft my own house in a carriage at five o'clock.

Q. State now anything that you did substantially in consequence of that employment?

Mr. Butler go the Chief Justice)—Do the President's counsel say that anything which Mr. Cox did afterwards tends to show the President's intent?

The Chief Justice remarked that the witness could proceed under the ruling of the Senare.

Wisness—After reflecting on the subject, supposing that the—

Mr. Butler (interposing)—I think that supposi-

Mr. Butler (interposing)—I think that suppositions can hardly come in. I never heard of a witness' suppositions being put in evidence.
Withess—I came to the conclusion—
Mr. Butler again interposing)—We don't want
your conclusions; we want your acts.
Mr. Curris—It is a pretty important act for a
lawyer to come to a conclusion.
Mr. Butler—It may be or it may not be.
Withess—I will be instructed by the court what
course to pursue.
Mr. Butler—it the witness state what he did. I
want him to be restrained to that.
Mr. Curris—He came to a conclusion, and I want
to know what that was.
Mr. Butler—I object to conclusions of his own
mind.

mind.
The CRIEF JUSTICE said that the witness might Witness—Knowing that a writ of quo warranto was a very telious one, and that it could not be brought to a conclusion within a year, and General Thomas having been arrested for a violation of the Tenare of Office act, I thought that the best mode of

proceeding was— Mr. BUTLEN (again interposing)—I object to the witness' thoughts. (Laughter.)
The CHIEF JUSTICE (to the witness)—Give your conwitness-I determined then to proceed in the first

ustance in the case of General Thomas.

Q. Proceed how? A. Beiore examining the justice of the case, and if the case was in a condition for

ployed by the President may state what course he pursued, and why he pursued it. Mr. BUTLER—Do you think that he can put in his own determinations and reasonings? The CHIEF JUSTICE—In relation to this matter yes.
Mr. BUTLER-I should like to hear the judgment of

The CHIEF JUSTICE—In relation to this matter—yes.

Mr. BUTLER—I should like to hear the judgment of the Senate upon that.

The CHIEF JUSTICE—Counsel, please put the question in writing if any Senator desires it; if not, the witness will proceed.

Senator Howard asked that the question might be reduced to writing.

The question having been reduced to writing was read as follows:—"State what conclusion you arrived at as to the proper course to be taken to accomplish the instructions given you by the President."

Mr. BUTLER—I do not object to that. What I objected to was the witness putting his thoughts and his reasonings by which he came to a conclusion. What he did was one thing; what he thought, what he determined, what he wished and what he hoped depended so much upon his state of mind and upon whether he was loyal or disloyal in his disposition that we do not want that.

The CHIEF JUSTICE—The Chief Justice will direct the winess to confine bimself to the conclusions to which he came and to the steps which he took.

Witness—Having come to the conclusion that the most expeditious way of bringing the question in controversy before the Supreme Court was to apply for a writ of habeas corpus in case General Thomas case was in a proper shape for it, I had a brief interview with the Attorney General Thomas had engaged to act with counsel whom General Thomas had engaged to act in his behalf in the first instance.

Q. Who was that? A. Mr. Merrick; in order, however, to procure a writ of habeas corpus, it was necessary that the commitment should be made by a court, not by a Justice in Chambers or by a Justice of the Peace. General Thomas had been held to appear for further examination. On Wednesday, the 26th, the Criminal Court was opened, Chief Justice Cartter presiding, and he announced that he would then proceed with the examination of the case against General Thomas.

Mr. Better—We wish the witness to state what he did in court. It may have resulted in a record and

ourt.

Mr. Cuntus—We wish the witness to state what he did in court. It may have resulted in a record and it may not. Until we know what he did we cannot tell whether it resulted in a record or not. There may have been an ineffectual attempt to get into

tell whether it resulted in a record or not. There may have been an ineffectual attempt to get into court.

Mr. BUTLER—I call your attention, Mr. President and Senators, to the ingeniousness of that speech. The witness testified that the court had opened, and he was going on to say what Chief Justice Cartter announced in a criminal court.

Mr. Curtis (interrupting)—Will the honorable Manager give me one moment? I said, and intended to be so understood, that here was a Chief Justice sitting in a magisterial capacity, and also, as Mr. Cox stated, he was sitting there holding the Criminal Court. What we desire to prove is that there was an effort made by Mr. Cox to get this case transferred from the Chief Justice, in his capacity of magistrate, into and before the Criminal Court, and we wish to show what Mr. Cox did in order to obtain that.

Mr. BUTLER—If the Senate were to try Chief Justice Cartler as to whether he did right or wrong, I only desire that he shall have counsel here and be allowed to defend himself. I never heard of the proceedings of a court or of a magistrate attempted to be proved in a tribunal, when he was not on trial, by the declaration of the counsel for the criminal.

The CHIEF JUSTICE—The counsel will reduce the question to writing, and the Chief Justice will submit it to the Senate.

The question being reduced to writing, was rend, as follows:—"What did you do towards getting out a writ of habeas corpus under the employment of the President."

Mr. BUTLER—That is not the question that we have been debating at fill. I made an objection, Mr. President, that the witness should not state what took place in court, and now counsel put a general question which evades that.

Mr. Evarrs—Our general question is intended to draw out what took place in court.

Mr. BUTLER—Then we object.
Mr. Evalues—Then I understand you; but I do not want to be catechised about it.

The Chief Justice put the question to the court as to whether the testimony would be admitted.

Mr. Evalues—lask that there be added to the question these words;—"This being intended to cover what the witness heard in court."

Mr. Evars—The question needs no change whatever. It is intended to call out what the witness did towards getting out a writ of habeas corpus, and it covers what he did in court, the very place to do it.

Mr. Curis—If any change or addition is to be made to the question I should like to alter the word "court," because there may be a double meaning to that. What was done or intended to be done was before a magistrate.

Mr. Eurise—Sitting as a indge?

that. What was done or intended to be done
before a magistrate.

Mr. Butler-Sitting as a judge?

Mr. Curtis-Sitting as a magistrate.

The question was then modified so as to read—
"What did you do towards getting out a habeas corpus
or the employment of the President?"

The yeas and nays were taken and resultedWyeas
27—nays 23, as follows:—

27—nays 23, as follows:—

Authors Bayard, Buckalew, Davis, Dixon,

27—nays 23, as follows:—
YEAS—Senators Anthony, Bayard, Buckalew, Davis, Dixon, Doolittle, Fessenden, Powier, Frelingbuysen, Grimes, Hendricks, Johnson, McCreery, Morril, Me., Morton, Norten, Fratterson of Tenux, Ross, Saulsbury, Sherman, Sprague, Sumner, Trumbull, Van Winkle, Vickers, Nays, Senators Cameron, Cattell, Chandler, Conking, Conness, Cragin, Drake, Edmunds, Ferry, Harian, Howard, Howe, Morgan, Morrill of Vt., Sye, Pomeroy, Ramsay, Stewart, Thayer, Tipton, Williams, Wilson and Yates—23.

NAYS—Senators Cameron, Cattell, Chandler, Conking, Conness, Cragin, Drake, Edmunds, Ferry, Harlan, Howard, Howe, Morgan, Morrill of Vt., Nye, Pomeroy, Ramsay, Siewart, Thyser, Tipton, Williams, Wilson and Yates—23.

So the question was admitted.

Witness—When the Chief Justice announced that he would proceed as an examining justice to investigate the case of General Thomas, not as holding court, our first application to him was to adjourn the investigation to the criminal court in order to have the action of that court. After some little discussion the application was refused. Our next effort was to have General Thomas committed to prison in order that we might apply to that court for a writ of habeas corpus and upon his being remanded by that court, if it should be done, we might follow up the application by one to the Supreme Court of the United States. The counsel who represented the government of the United States (Messrs, Carpenter and Riddie) applied to the court then for a postponement.

Mr. Butler (to the witness)—Stop a moment. (To the Chief Justice)—Does this ruling apply to what was done by others?

The CHIEF JUSTICE—If it is a part of the same transaction the Chief Justice conceives that it comes within the ruling.

The witness then proceeded:—The Chief Justice having indicated the intention to postpone the examination, we directed General Thomas to decline giving bail for his appearance, and to surrender himself into custody, and we announced to the Judge that he was in custody and then presented to the Criminal Court an application for the writ of habeas corpus. The counsel on the other side objected that General Thomas could not put himself into custody, and that they did not desire that he should be detained in custody. The Chief Justice also declared that he could not restrain General Thomas of his liberty nor holdnim, nor allow him to be held, in custody, supposing that he must either be coamitted or finally discharged. We then claimed that he should be discharged, not supposing that the must

The CHIEF JUSTICE (to the witness)—What date was that? A. It was the 25th of February, immediately after the court adjourned.

Mr. CURTIS—We propose to show that, having made his report to the President of the faiture of that attempt, he then received from the President other instructions on that subject to follow up the attempt

Instructions on that subject to follow up the attempt in another way.

Mr. Bingham—Do I understand that this interview with the President was on the 26th?

Mr. Curris—I was.

Mr. Bingham—Two days after he had been impeaced by the House of Representatives?

Mr. Curris—Yes.

Mr. Bingham—Two days after he was presented, and you are asking the President's declarations to

Mr. Curtis—Yes.

Mr. Besham—Two days after he was presented, and you are asking the President's declarations to prove his own innocence?

Mr. Curtis—We do not ask for his declarations; we ask for his acts.

Mr. Butlers—Two days after his arraignment at this bar. We ask for a vote of the Senate.

The Chief Justice—The Chief Justice may have misunderstood the ruling of the Senate, but he understands it to be this:—That facts in relation to the intention of the President to obtain a legal remedy commencing on the 22d of February be pursued to the legitimate termination of that particular transaction, and therefore the Senate has ruled that the witness may go on and testify until that particular transaction comes to a close. Now, the offer is to prove the conversation after the nomination of that effort in the District Court. The Chief Justice does not think that that is the view of the Senate, but he will submit the question to the Senate.

The question was submitted and the evidence was ruled out without a division.

Question by Mr. Curtis—After you had reported to the President, as you have stated, did you take any further step or do any further act in reference to raising the question of the constitutionality of the law or the Tenure of Office act?

Mr. Butlers—If what the President did himself after he was impeached after the 22d of February cannot be given in evidence I do not see that what his counsel did for him can be; it is only one step farther.

Mr. Evaris—It was not reduced to writing.

Mr. Evaris—It was not reduced to writing.

Mr. BUTLER—The question was purely to it.
Mr. EVARTS—It was not reduced to writing.
By direction of the Chief Justice the question was put in writing as follows:—"After you had reported to the President the result of your efforts to obtain a writ of habeas corpus did you do any other act in pursuance of the original instructions you had received from the President on Saturday to contest the right of Stanton to continue in the onice; if so, state what the acts were."

right of Stanton to continue in the onice; if so, state what the acts were."

The CHIEF JUSTICE thinks the question inaumissible within the last vote of the Senate, but will put it to the Senate if any Senator desires it.

Senator Doolaytle asked a vote.

By request of Senator Sherman, the fifth article was read by the Secretary.

Mr. Evaris said it was proposed to show a lawful intent.

Senator Howe—If it is proper I would like the first question addressed to the witness on the stand read again.

The Chief Justice—On which the ruling took place?

Senator Howe—No.

Mr. Evaris—The offer to prove?

Senator Howe—The offer to prove.

The Offer to prove was again read.

The Chief Justice decided that, under the fifth article on the question of intent, the question was admissible.

Senator Howard asked that the question be put

article on the question of intent, the question was admissible.

Senator Howard asked that the question be put to the Senate, and the question was admitted, by the following vote:—

Yras—Senators Anthony, Bayard, Buckdew, Davis, Dixon, Doolikle, Fessenden, Fowler, Grimes, Hendricks, Howe, Johnson, McCreery, Morrift of Ke., Morton, Norton, Patterson of N. H., Pauerson of Tenn, Ress, Saulsbury, Sherman, Sprague, Sumner, Trumbull, Van Winkle, Vickers and Miley—27.

NATS—Senators Cameron, Cattell, Chandler, Conking, Conness, Gragin, Drake, Edmunds, Ferry, Frelinghuysen, Harlan, Howard, Morgan, Morrill of Vt, Nye, Pomeroy, Ramsey, Stewart, Thayer, Tipton, Whilams, Wilson and Yates—42.

Witness—On the same day or the next, the 21st, I

Yates 43.

Witness—On the same day or the next, the 21st, I filled an information, in the nature of a quo warranto; I think a delay of one day occurred in the effort to procure certified copies of General Thomas' commission as Secretary of War ad interim; I then applied to the District Attorney to sign the informa-

commission as Secretary of War ad Interina; I then applied to the District Attorney to sign the information, in the nature of a puo vearranto, and he declined to do so without instructions from the President or Attorney General; this fact was communicated to the Attorney General and the papers were sent to him, and we also gave it as our opinion that it would not be—

Mr. Butler—Stop a moment. We object to the opinion given to the Attorney General.

Mr. Evaris—We don't insist upon it.

Mr. Curtis—You can now proceed to state what was done after this time. A. Nothing was done after that by me.

On motion of Senator Conness the Senate took a recess of fifteen minutes at half-past two.

After recess the witness was cross-examined by Mr. Butler.

Q. Have you practised in Washington always? A. Yes, sir.

Q. Were any other counsel associated with you by the President? A. No, sir, not to my knowledge.

Q. Were you counsel in that case for the President or for General Thomas? A. I considered myself counsel for the President.

Q. Did you so announce yourself to Chief Justice Cartter? A. I did not.

Q. Then you appeared before him as counsel for Mr. Thomas? A. I did in that proceeding.

Q. He did not understand in any way, so far as you know, that you were desiring to do anything there in behalf of the President? A. I had mentioned the fact that I had been sent for to take charge of some proceedings.

Q. As counsel for the President? A. Yes, sir; that

of that that had been sent for to take charge of some proceedings.

Q. As counsel for the President? A. Yes, sir; that I had been sent for by the President.

Q. But did you tell him that you were coming into his court as counsel for the President? A. No; I did not.

Q. But did you tell him that you were coming into his court as counsel for the President? A. No; I did not.

Q. That is the question I put to you. In any of your discussions of questions before the court did you inform the court or the counsel that you desired to have the case put in frame so that you could get the decision of the Supreme Court? A. I do not think I did.

Q. Had they any means, either court or counsel, of knowing that that was the President's purpose or yours, so far as you were concerned, only by the habeas corpus spacen of in General Thomas' answer—nothing only what they might infer? A. No, sir. I had no conversation with them whatever.

Q. I am not speaking of conversations with connsel outside of the court, but I am speaking of the proceedings in court? A. No, sir.

Q. And so far as the proceedings in court are concerned there was no intimation, direct or indirect, that there was any wish on the part of the President or the Attorney General to make a case to test the constitutionality or the propriety of any law? A. There was none that I remember in the presence of the judge or the bench at that time other than private intimations.

Q. Your private intimations I have not asked for. Were there any to the counsel that appeared on the other side? A. No, sir.

Q. Then, so far as you know, they, the counsel on the other side, would only treat this as a question of the rights of personal liberty of Mr. Thomas? A. Yes, sir.

Q. Well, sir, it being your desire to have that question tested, and as you appeared for Mr. Thomas, and as it must have been done by consent of the other side, the prosecutor, why didn't you speak to the opposite counsel and ask to have it put in frame for that? A. Because I didn't think they would consent to it. We didn't want to let them know what our object was. what our object was.

Q. Then you meant to conceal your object? A. We rather did. They seemed to divine it from the

Q. You say you prepared papers for an informa-tion in the matter of a quo warranto? A. Yes, sir.
Q. What day was that? A. That either on Wednesday, the 26th, or the next day, the 26th or 27th of February. I think it was on the 27th.
Q. And that was after the President was impeached? A. Yes, sir.
Q. Did you see the President between the time when you reported to him and the time when you got this paper? A. I did not, sir. I have never seen him since.

this since:

Q. You prepared this paper? A. Yes, sir.

Q. And carried it to the Attorney General's? A. To
the District Attorney. I spoke to him.

Q. And he said he must have some order from the
Attorney General or the President? A. Yes, sir.

Q. And then you went to the Attorney General? A.
I sent the papers.

Q. Did you send a note with them? A. I do not
recollect; I sent the information over verbal or writ-

Q. Who did you send it by? A. By Mr. Merrick or

Q. Who did you send it by? A. By Mr. Merrick or Mr. Bradley.
Q. What Bradley? A. The elder.
Q. Was he concerned in the matter? A. He appeared in court with us merely as an adviser for General Thomas.
Q. Joseph R. Bradley appeared in the District Court as attorney? A. He appeared in person, but not in the character of attorney.
Q. Did he say anything? A. Nothing to the court.
Q. Did he say anything? A. Nothing to the court.
Q. Is that the man that was disbarred? A. The same—so that he could not appear.
Q. Well, after you sent these papers to the Attorney General, then, did you ever receive them back?
A. I did.

ney General, then, did you ever receive them bass.

Q. When? A. few days ago.

Q. By a few days ago, when do you mean? Since you have been summoned as a witness? A. I think not; just before, I believe.

Q. Preparatory to your being summoned as a witness? A. No, not that I am aware of.

Q. After or before this case was opened? A. After.

Q. How long? A. I could not say; I think it was four or five days ago.

Q. Have you had any communication with the Attorney General about them between the time when you sent them and the time when you received them?

A. None in person.

Q. Had you in writing? A. No, sir.

Q. Then you had none in any way? A. Yes, sir; Mr. Merrick said it was more convenient for him to see him.

Mr. Merrick said it was more convenient for him to see him.
Q. Of which you only know from what he said? A. Yes, sir.
Q. They were returned to you; where are they now?
A. I have them in my pocket.
Q. Were they not returned to you for the purpose of your having them when you were called as a witness? A. No, sir; they came with a message.
Q. How soon before you were summoned? A. Not more than a day or two.
Q. On the same day? A. I think a day or two before.
Q. To your knowledge have these paper ever been presented to any judge of any court? A. They have

Q. To your knowledge have these paper ever been presented to any judge of any court? A. They have not, up to the hour that we are speaking.

Q. Have you been directed either by the Attorney General, or by the President, to present them to any judge of any court? A. The papers came to me with the direction to use them as Mr. Merrick or myself choose, in our own discretion.

Q. Verbal or written? A. Verbal to Mr. Merrick.

Q. But Mr. Merrick was not associated with you as counsel for the President? A. He was not. As I understand, he was counsel for General Thomas.

Q. Was this movement on the part of General Thomas for the information made as a quo warranto? A. No, sir; it was filed on the relation of General Thomas.

Thomas for the information imade as a quo vertranto?

A. No, sir; it was filed on the relation of General Thomas.

Q. have you received in writing or verbally to yourself any direction, either from the President or the Attorney General, to file these papers? A. No positive orders.

Q. Any positive or imperative from them to you?

A. Not immediately.

Q. I don't mean through Mr. Merrick? A. The only communication was through him.

Q. From whom did he bring you a direction or communication? A. From the Attorney General.

Q. Who? A. The Attorney General.

Q. Who? A. The Attorney General.

Q. Who is that? A. Mr. Stanbery.

Q. And this was five days ago. Why he resigned as Attorney General some fortnight ago. How did he come as Attorney General to speak by order of the President? A. I meant Mr. Stanbery.

Q. Have you ever received any direction, through Mr. Merrick, from the Attorney General officially, as a direction for the President? A. Through Mr. Merrick, all that I received was—

Q. Excase me. Have you received any communication, through Mr. Merrick, or anybody else, from the Attorney General of the United States, not the resigned Attorney General of the United States, not the resigned Attorney General of the United States, not the resigned Attorney General of the United States, not the resigned Attorney General of the United States, not the resigned Attorney General of the United States, not the resigned Attorney General of the United States, not the resigned Attorney General? A. I believe so, sir.

Q. When you handed him the papers was he Attorney General? A. I believe so, sir.

Q. Could you not be certain on that point? A. I don't know when he resigned.

Q. And the resignation made no difference in your action? A. I don't think he had seeigned at that time. I am very sure the papers were sent to him within two or three days after the discharge of General Thomas.

time. I am very sure the papers were sent to him within two or three days after the discharge of General Thomas.

Q. And were returned by him to you within four or five days? A. Yes, sir, four or five days.

Q. After he resigned? A. I think it was—yes, şir.

Q. So-that when you told us Mr. Merrick had brought it from the Attorney General, it was from Mr. Stanbery? A. Yes, sir.

Q. You had received no communication from the President or the Attorney General as to what should be done with this proceeding? A. No, sir.

Q. Then, so far as you know, there has not been any direction or any effort from the Attorney General or the President (leaving out Mr. Stanbery, who is not Attorney General now) to have anything done with these papers? A. There has been no direction, I know.

Q. No communication. A. No communication since the paper was forwarded to me to go to the court for a moment.

Q. Did Mr. Merrick or yourself make a motion to have Mr. Thomas discharged? A. Yes, sir.

Q. Was he not in custody under his own recognizance up to the time of making that motion? A. He claimed that he was, but the other side denied it.

Q. And to settle that question you moved his discharge? A. Yes, sir.

Q. And that was granted? A. It was.

Q. Did you make that motion? A. I was.

Q. Did you make that motion? A. I was.

Q. Did you make that motion of the President's counse!?

Mr. Curtis—He has not said that.

Mr. BUTLER—Exense me. If he was not discharged

from custody on the motion of the President's counsel?

Mr. Curtis—He has not said that.

Mr. Butler—Excuse me. If he was not discharged from custody what was he discharged from? Discharged from any further detention or examination? He could not be detained without being in custody, could he? A. Not very well.

Q. Then I will repeat the question upon which I was interrupted, whether in fact, Mr. Cox, Mr. Thomas was not discharged from custody, from detention, from further being held to answer on that complaint, upon the motion of the President's counsel? A. He was, sir.

Q. Now, then, sir, was that information signed by any attorney, past, present or to come, so far as you know? A. It was not sir.

Q. Now, then, sir, was that information signed by any attorney, past, present or to come, so far as you know? A. it was not sir.

TESTIMONY OF RICHARD T. MERRICK.
Richard T. Merrick was then sworn on behalf of respondent. Examined by Mr. CURTIS.**
Q. Where do you reside? A. I reside in this city.
Q. What is your profession? A. I am a lawyer, sir.
Q. How long have you been in that profession? A. Nineteen or twenty years, sir.
Q. Weer you employed professionally in any way in connection with the matter of General Thomas before Chief Justice Cartier? A. I was employed by General Thomas, on the morning of the 22d of February, to appear in the proceedings against him being brought before Chief Justice Cartier.

Q. In the course of that day, the 22d of February, to appear in the proceedings against him being brought before Chief Justice Cartier.

Q. In the course of that day, the 22d of February, to appear in the President of the United States? A. I went to the President's house for the purpose of taking to the President's house for the purpose of taking to the President's house for the President what had transpired in regard to the case.

Q. Did you communicate to him what had transpired in regard to the case?

Mr. Butler.—I submit, Mr. President, that that is wholly immaterial. The Senate ruled in the President's acts in employing Mr. Cox as his counsel, but what communication took piace between the President acts in employing Mr. Cox as his counsel, but what communication took piace between the President and Mr. Merrick, who very frankly tells us that he was employed by General Thomas as his counsel, I think cannot be evidence.

The Christ Justice was understood to rule the question admissible.

Mr. Curtis—State whether you communicated to the President in the presence of General Thomas what had transpired in reference to the case? A. My recollection is that I communicated what had transpired to the President in the absence of General Thomas what had transpired in reference to the case of the papers to be twee

CONTINUED ON TENTH PAGE